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11 *Attorneys for Defendants Tesla, Inc., Elon Musk,*
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13 *Antonio J. Gracias, James Murdoch, Kimbal Musk,*
14 *And Linda Johnson Rice*

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 IN RE TESLA, INC. SECURITIES
19 LITIGATION

Case No. 3:18-cv-04865-EMC

**DECLARATION OF NATHANIEL
SMITH IN SUPPORT OF
DEFENDANTS' RENEWED
ADMINISTRATIVE MOTION TO SEAL**

1 **I, Nathaniel Smith, declare as follows:**

2 1. I am a member of the bar of the District of Columbia and serve as Managing Counsel
3 for Defendant Tesla, Inc. I have been employed with Tesla since April 2021, and in the course of
4 my employment have become familiar with Tesla's treatment of its proprietary business
5 information, such as that described in this declaration. I have personal knowledge of the matters
6 described below and I am competent to testify thereto.

7 2. I make this declaration pursuant to the Northern District of California Civil Local
8 Rule 795(c), in support of Defendants' Renewed Administrative Motion To Seal ("Motion to Seal").

9 3. On January 11, 2022, Plaintiff Glen Littleton ("Lead Plaintiff"), filed a Partial
10 Motion for Summary Judgment ("MSJ") (Dkt. No. 352). On February 1, 2022, Defendants filed an
11 Opposition to the MSJ, (Dkt. No. 365), and on February 15, Plaintiff filed a Reply in support of the
12 MSJ (Dkt. No. 370). These pleadings contained certain confidential information and relied on
13 certain confidential exhibits and deposition testimony. Accordingly, the Parties submitted
14 Administrative Motions to Seal (Dkt. Nos. 351, 364, 367, and 369), requesting that the Court seal
15 the confidential excerpts therein, and exhibits and deposition testimony relied on.

16 4. On April 1, 2022, the Court denied the Parties' Motions to Seal without prejudice,
17 and ordered the Parties to meet and confer on a narrowed list of materials for sealing. (Dkt. No. 387
18 at 19-20).

19 5. The Parties have met and conferred, however they have been unable to reach
20 agreement. Defendants now bring this Motion to Seal a narrowly tailored list of confidential
21 information referred to in the Parties' MSJ pleadings.

22 6. On May 20, 2020, this Court entered a Protective Order (Dkt. No. 255), to which the
23 parties had agreed. The Protective Order provides for the protection of "Confidential" information,
24 described as "information (regardless of how it is generated, stored or maintained) or tangible things
25 that qualify for protection under Federal Rule of Civil Procedure 26(c) and other proprietary or
26 private information warranting special protection from public disclosure and from use for purposes
27 other than prosecuting this litigation." In accordance with the terms of the Protective Order, Tesla
28 designated certain produced documents and deposition testimony as "Confidential."

1 7. The Motion to Seal concerns such Confidential documents and deposition testimony
2 that reflect Tesla's and third party shareholder's and investor's sensitive, non-public
3 communications regarding Elon Musk's August 7, 2018 bid to take Tesla private (the "Take Private
4 Bid"). It is Tesla's practice to maintain all such non-public documents and communications strictly
5 confidential, therefore, it is my belief that all of these individuals and third parties involved had an
6 expectation of the private and confidential nature of their communications.

7 8. Exhibits 41, and 44-47 reflect non-public, internal communications of a third-party
8 shareholder of Tesla, discussing the shareholder's reactions to and consideration of participating in
9 the Take Private Bid. Defendants redacted exhibit 41, but exhibits 44-47 cannot be parsed and
10 Defendants request to seal them in full. The redacted excerpts of the deposition of Joseph Fath,
11 (Dkt. No. 352-6, and 371-4), specifically discuss the content of these exhibits, and Defendants
12 request to have them sealed, accordingly. Likewise, the deposition transcript of Nii Owuraka Koney
13 (Dkt. No. 352-8), was designated confidential by third party, Jennison, and contains non-public,
14 reactions to and consideration of participating in the Take Private Bid. Defendants request to seal
15 the limited excerpts of this transcript in full.

16 9. Exhibits 58 and 158 reflect non-public communications from third-party
17 shareholders in Tesla to Tesla, expressing feedback on the Take Private Bid, including, for example,
18 concerns regarding participation restrictions. These communications were made by third parties
19 with the expectation of privacy, and contain information that may have been otherwise withheld if
20 written for public consumption. Accordingly, Defendants have redacted and request to seal the third
21 party communications portions of these exhibits.

22 10. Exhibits 90, 91, 147, 155, 157 reflect internal Tesla discussion of third party
23 shareholder and potential investor feedback on the Take Private Bid. These documents provide
24 direct quotations of third party statements that were provided to Tesla in confidence, with the
25 expectation that such commentary would not become public. Accordingly, Defendants have
26 redacted the third party statements and request to seal such portions of these exhibits. Exhibits 90,
27 147 and 155 consist entirely of such statements, and Defendants request to have it sealed in full.
28

1 11. Exhibits 79, 121, and 165 are text message and call logs of Tesla executives,
2 including Elon Musk, which include the personal contact information of private individuals, and
3 certain unrelated personal communications. Defendants have redacted this information from the
4 exhibits, and request that it be sealed.

5 12. The redacted excerpts of the deposition transcripts of Elon Musk (Dkt. No. 365-1
6 (Ex. B)), and Deepak Ahuja (Dkt No. 365-1 (Ex. E)), discuss certain confidential terms of the
7 participation of third party investors in the Take Private Bid, as well as other issues affecting
8 potential third party investment and shareholder participation in Take Private Bid. The redacted
9 excerpts of the deposition transcripts of Deepak Ahuja (Dkt No. 365-1 (Ex. E)), and Martin Viecha
10 (Dkt. No. 352-11), also discuss third party shareholder and potential investor feedback on the Take
11 Private Bid, including the above referenced exhibits regarding third party statements provided to
12 Tesla in confidence and made with the expectation that such statements would not become public.
13 Defendants request that the limited redacted portions of these deposition transcripts be sealed
14 accordingly.

15 13. Finally, Defendants request to seal certain limited excerpts of the MSJ pleadings
16 (Dkt. Nos. 352, 365, and 370), which specifically quote from the above-listed exhibits, and reveal
17 confidential, non-public information pertaining to third parties.

18 14. Public disclosure of these confidential, non-public materials will reveal private
19 communications related to Tesla investors' and shareholders' investment decisions, strategies, and
20 feedback, all of which were expressed with the expectation of privacy. The release of such
21 information publicly could chill future investors' willingness to speak freely and candidly with
22 Defendants for fear of their communications being released publicly in the future, and may interfere
23 with or harm Tesla's ability to seek future funding or investors, as well as its relationships with
24 existing investors.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing
26 is true and correct and that this document was executed in Washington, D.C.
27
28

1 DATED: April 22, 2022

2
3 By /s/ Nathaniel Smith
4 Nathaniel Smith

5 ****

6 I, Kyle K. Batter, am the ECF user whose ID and password are being used to file the above
7 declaration. In compliance with Local Rule 5-1(h)(3), I hereby attest that Nathaniel Smith has
8 concurred in the filing of the above declaration.

9 DATED: April 22, 2022

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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12 By /S/ Kyle Batter
13 Kyle Batter
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